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3. Immediately upon obtaining licenses for the use of Donkey Kong on February 1, 1982, Coleco expended considerable amounts of money to develop Donkey Kong products and committed a major part of its future marketing plans to products using the Donkey Kong property.

4. By April of 1982, Coleco had developed its ColecoVision system and was prepared to introduce it into the market together with a home version of the Donkey Kong audio visual game. Each ColecoVision system was to be offered to the public together with a Donkey Kong cartridge as part of the marketing package. The inclusion of the Donkey Kong game was an integral part of Coleco's marketing strategy for ColecoVision.

5. On or about April 27, 1982, before the introduction of ColecoVision, I attended a business lunch with Mr. Sidney J. Sheinberg, President of Universal City Studios, Inc. ("Universal"), to discuss the possible business opportunities for our two companies.

6. During the course of our discussions on or about April 27, I mentioned to Mr. Sheinberg that Coleco was about to introduce the Donkey Kong home video game with its ColecoVision system, and I showed Mr. Sheinberg some promotional materials relating to the game. Mr. Sheinberg indicated that Universal might have some problem with our marketing of Donkey Kong, and he claimed that Universal owned the rights to King Kong. I expressed surprise and told him that I was not aware of any conflicting claim of rights that could be made with respect to Donkey Kong. I suggested that our respective legal departments should discuss the matter.

7. On or about April 29, 1982, Coleco received a copy of a telex from Universal which had been sent by Universal to Nintendo. This telex alleged, among other things, that, except for book publishing rights, Universal was the sole and exclusive owner of all rights to King Kong and that Donkey Kong was an infringement on such rights. Further, the telex demanded that all marketing and distribution of Donkey Kong cease and threatened legal action wherein Universal would seek "restraining orders, injunctions and damages."

8. After receiving Universal's telex, Coleco immediately consulted with its attorneys on that same day. While we disagreed with Universal's claim that Donkey Kong was an infringement on King Kong and continue so to disagree, it was apparent that the mere threat of litigation could severely disrupt Coleco's impending marketing plans for its ColecoVision system featuring the Donkey Kong game and would result in severe economic injury to Coleco. Not only would the threat of an injunction and damage claim, however frivolous, make it extremely difficult for Coleco to market the ColecoVision system through its distributors, but the adverse publicity created by the threatened litigation would itself be extremely injurious to Coleco's reputation. Consequently, I believed that it was imperative to resolve the matter as expeditiously as possible.

9. Later that same day, I had a discussion with Mr. Sheinberg, advised that Coleco had been very surprised by Universal's claim expressed to me on or about April 27 and that Universal's threats put Coleco's marketing plans in great jeopardy. Mr. Sheinberg responded that Universal was looking to settle the matter and would settle with Coleco even if it could not settle with Nintendo. He further promised that Universal would take no precipitous action which might destroy Coleco's marketing plans for ColecoVision and Donkey Kong.

10. On April 30, 1982, I received a conference telephone call from Mr. Hadl, a lawyer at Universal. Mr. Schwefel, Senior Vice President and General Counsel of Coleco, also participated in the telephone conference. We advised Mr. Hadl that our lawyers did not think that Universal had a good claim against Donkey Kong. Mr. Hadl disagreed and offered us a license to continue our plans to market Donkey Kong. Mr. Schwefel and I advised that we would consider paying Universal a percentage of our Donkey Kong sales in return for a covenant not to sue. Later that day, I understand that Mr. Schwefel had several further telephone calls with Mr. Hadl wherein they discussed the terms of a possible covenant not to sue.

11. On the evening of April 30, 1982, another conference call was held between me and Mr. Schwefel on behalf of Coleco and Messrs. Sheinberg and Hadl on behalf of Universal. We advised Messrs.

Sheinberg and Hadl that it made no sense for Coleco to settle with Universal if Universal still planned to sue Nintendo, since any such lawsuit would still have severe adverse impact on Coleco's marketing plans for Donkey Kong. Messrs. Sheinberg and Hadl advised that they did not want to hurt Coleco and it was decided that a meeting should be held on May 6, 1982 between Universal, Coleco and Nintendo to try to resolve the matter.

12. Mr. Schwefel and I had several additional discussions with Mr. Hadl before the meeting on May 6 in which Mr. Hadl advised that even if Universal could not settle with Nintendo, it would settle with Coleco for a three percent royalty, and it was our understanding that Universal would take no action which would impair the marketing of Coleco's ColecoVision, which included the Donkey Kong cartridge, or the Donkey Kong cartridge made by Coleco in the Mattel and Atari formats.

13. I am advised that no settlement was reached at the May 6 meeting which was attended by Mr. Schwefel for Coleco. At that point we decided that Coleco had to come to an agreement with Universal in order to prevent irreparable injury to Coleco's marketing plans. I instructed Mr. Schwefel to negotiate an agreement with Universal whereby Universal would receive a three percent royalty on Coleco's Donkey Kong sales and would, in turn, grant a covenant not to sue and would take no other steps which would interfere with Coleco's distribution and promotion of Donkey Kong.

A 978

14. I am advised that Mr. Schwefel and Mr. Hadl did reach an agreement as above described and, consequently, Universal has refrained from taking any action which would interfere with the distribution of Coleco's ColecoVision, with the Donkey Kong cartridges, or Coleco's other Donkey Kong cartridges in the Mattel and Atari formats. A formal covenant not to sue and a royalty agreement was entered into on May 12, 1982.

15. On or about July 14, 1982, Coleco commenced selling its Donkey Kong cartridges. Coleco's sale of the Donkey Kong game together with its ColecoVision has proven to be a major nationwide marketing success.

16. To date Coleco has sold approximately 1,096,906 ColecoVision systems with accompanying Donkey Kong cartridges. In addition, Coleco has separately sold approximately 4,909,025 Donkey Kong cartridges in the Mattel and Atari formats. Recently, Coleco has also begun to market other Donkey Kong products such as toy figures of the Donkey Kong characters.

17. To date, Coleco has remitted \$3,735,620 in royalty payments to Universal. All of Coleco's Donkey Kong products bear markings identifying Nintendo as their source. None of these products have

A 979

any markings related to Universal and Universal has never requested any such marking.

Arnold C. Greenberg
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Sworn to before me this

20th day of April, 1983

Walter A. Truczek
Notary Public